

## No. 362

**INSURANCE—FIRE INSURANCE—CASUALTY COMPANIES—TAXATION, when casualty company subject to, for fire marshal fund—FIRE MARSHAL**

**Held:** A casualty company must pay tax under Section 2761, Revised Codes of Montana, 1935, as amended by Chapter 83, Laws of 1941, on premiums received from fire coverage on automobiles. The state insurance commissioner has authority to require payment of tax by casualty company on premiums received on fire policies covering automobile.

February 19, 1942.

Mr. John J. Holmes  
State Auditor and Ex-officio  
Commissioner of Insurance  
Capitol Building  
Helena, Montana

Dear Mr. Holmes:

Since my recent conference with your department relative to Opinion No. 306, Vol. 19, Report and Official Opinions of the Attorney General, this office has given further consideration to the question involved and has concluded said opinion correctly interprets the law applicable thereto. I must therefore advise you that the opinion must stand as written.

I desire again to call your attention to the fact Opinion No. 306, supra, does not hold a casualty company may write fire insurance. The opinion merely holds a casualty company may write fire coverage on an automobile which is merely incidental to its business. The opinion—under no reasonable construction—can be said to hold a company, organized strictly as a casualty company and whose principal business is that of writing casualty coverage, may enter the field of a fire insurance company and write all forms of fire coverage. The opinion very clearly points out a casualty company is confined to fire coverage on an automobile.

Your contention that, under this opinion, your department would have no authority to enforce payment of the tax of one-fourth of one per cent for the benefit of the fire marshal's fund, as provided in Section 2761, Revised Codes of Montana, 1935, as amended by Chapter 83, Laws of 1941, is in my opinion erroneous.

Before amendment, Section 2761 required all fire insurance companies to pay a tax of one-fourth of one per cent "on the gross premium receipts of such companies . . . on all business transacted by it in the State of Montana during the calendar year next preceding . . ." The amendment eliminates the language here quoted and substitutes therefor the following language, "on the direct fire premiums received for fire insurance policies and the fire portion of automobile insurance policies during the calendar year next preceding . . ." (Emphasis mine.) Even though the statute uses the term "fire insurance company," it is clear the legislature intended this tax should be paid on all premiums received for coverage of fire hazards, regardless of by whom received. To make this clear, the legislature used the specific language, "and the fire portion of automobile insurance policies." With this phrase omitted, it might be interpreted the tax went only on "direct fire premiums," which clearly would not include a coverage carried by a casualty company on an automobile which was only incidental to the "direct premium" for the casualty coverage.

It is therefore my opinion:

1. A casualty company must pay the tax on the premium received for the fire coverage on an automobile and you have authority to require of casualty companies writing fire coverage on automobiles the payment of such tax.

2. It is within your authority and you should require a casualty company making application to write fire coverage on automobiles to agree to the payment of such tax on premiums received from such coverage. Upon refusal so to agree, you would be justified in denying its application to do business in this state for such purpose.

Sincerely yours,

JOHN W. BONNER  
Attorney General

(Editor's Note: See also Opinion No. 373, post.)